

STATE OF MICHIGAN
COURT OF APPEALS

PHEASANT RIDGE DEVELOPMENT
COMPANY, INC., FRANK MANCINO,
CAROLYN MANCINO, RALPH DITTMAR,
NANCY DITTMAR, JOHN M. ALLEN,
DAWN RACHELLE ALLEN, CLINTON J.
GRASSMICK, CARLA A. GRASSMICK, L. R.
SCOHY, KAY L. SCOHY, DENNIS PHILLIPS,
DONNA PHILLIPS, RICHARD ALLEN CLARK,
KIMBERLY K. CLARK, HENRY V.
SCHWARTZ, KENDRA E. SCHWARTZ,
DENNIS B. SMITH, PAULA A. SMITH, TODD
W. STAFFORD, TINA M. STAFFORD, DAVID
M. BASTOS, SYDNEY R. BASTOS, DAVID
BAASKE, CAROL BAASKE, THOMAS E.
KONOPINSKI, ROXANA J. KONOPINSKI,
MARY JANE STATLER, GARY E. METZ
REVOCABLE LIVING TRUST, CHARLES
HARDIES, LINDA HARDIES, WILLIAM
HAMILTON, and AMANDA HAMILTON,

Plaintiffs-Appellees,

v

NOTTAWA TOWNSHIP,

Defendant-Appellant,

and

ROBERT P. MCLANE AND ANGELA R.
MCLANE,

Defendants.

UNPUBLISHED
December 28, 2006

No. 269453
St. Joseph Circuit Court
LC No. 05-000253-CZ

Before: White, P.J. and Zahra and Kelly, JJ.

PER CURIAM.

Defendant Nottawa Township appeals as of right from an order granting its motion to quash a preliminary injunction, granting plaintiffs' motion for summary disposition pursuant to MCR 2.116(C)(10), and denying its cross-motion for summary disposition. We affirm in part, reverse in part and remand for entry of an order granting summary disposition to defendant. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs are owners as tenants in common of a riparian lot, Lot A, which is zoned for single-family residential use. Except for plaintiff Pheasant Ridge Development Company, Inc., plaintiffs also own nonriparian lots in the developer's subdivisions. The deed conveying Lot A to plaintiffs required that all owners be members of the Lot A Association, which has a charter and by-laws. This document indicates that the members have each been assigned a boat slip on Lot A, and that there is a dock for every two boat slips. It also provides that an interest can be conveyed, and does not tie conveyances to the conveyance of an owner's non-riparian lot. Essentially, Lot A is being used as a private marina for the owners of Lot A/members of the Lot A Association.

The township objected to this use of Lot A. It asserted that the use violated a keyhole (anti-funneling) regulation, Section 300.408 of its Ordinances, and that the use was also inconsistent with Lot A's designation as an R-2, medium density residential district, as set forth in Section 300.307.2 of the Ordinances. The trial court concluded that the use did not violate either ordinance.

De novo review applies to decisions granting summary disposition, *City of Taylor v Detroit Edison Co*, 475 Mich 109, 115; 715 NW2d 28 (2006), as well as to issues involving construction of an ordinance. *Soupal v Shady View, Inc*, 469 Mich 458, 462; 672 NW2d 171 (2003).

We affirm the circuit court's determination that the anti-funneling ordinance does not apply. Plaintiffs are owners of Lot A, and exercise their riparian rights by virtue of this ownership, not by virtue of their ownership of nonriparian lots. Nevertheless, the circuit court erred in concluding that the use was permitted under the R-2 zoning classification. A lot in an R-2 district permits "[a]ccessory uses associated with single-family residential structures, such as garages, shed for yard tools, playhouse, boat houses, etc." A dock would be an accessory use to a single-family residence, and a dock or docks could be in place as an accessory use even if a lot did not have a single-family residence. However, Lot A was not being used for a single-family residence or for an "[a]ccessory use[] associated with single-family residential structures." This lot had 18 docks and 36 boat slips and was being used as a private marina. A private marina is not an accessory use associated with a single-family residence. Moreover, here it was not an accessory use at all, but the primary use.

Plaintiffs argue that the township did not include a limitation in its ordinance on the number of docks and therefore could not base an ordinance violation on a large number of docks. Further, plaintiffs attempt to distinguish *Soupal, supra*. There, the Court held that a riparian parcel owned by an association, which had a large dock with 20 boat slips and an old cabin used as a community house, was a use inconsistent with the parcel's single-family designation. Plaintiffs assert that the ordinance at issue in *Soupal, supra*, defined "marina" to include the operation at issue, that the property was owned by an association and therefore the docks were

not being used by the owners of the parcel, and that the use was not accessory to the structure on the property, which was not being used as a single-family residence. However, these distinctions are not germane to the pertinent analysis in *Soupal, supra*:

[O]peration of a twenty-boat-slip marina and a community house is not an “[a]ccessory use” that is “related to [the] principal use” of the R-1 lot under [the applicable ordinance]. The ordinance defines “Principal Building or Use” as “the principal or primary purpose for which a building or parcel of land may be designed, arranged, intended, maintained, or occupied.” Art III, § 3.1. It is clear from the testimony that the cabin on lot 139 was designed to be a single-family dwelling. The lot, with its seventy-seven feet of lake frontage, was intended to support that use. Operating the marina, irrespective of its commercial or noncommercial nature, is not “related” to the property’s permitted use as a single-family dwelling. *Soupal, supra* at 465.

Similarly, having eighteen docks and thirty-six boat slips is not a use “associated with single-family residential structures”, as required by defendant township’s ordinance.

Affirmed in part, reversed in part and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Helene N. White

/s/ Brian K. Zahra

/s/ Kirsten Frank Kelly